IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL NO.359/1995

Anusuchit Jaati Evam Janjati Karamchari Kalyan Sangh
Vs.
State of Rajasthan & anr.

Date of Judgment :: 03-01-2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE GOVIND MATHUR

Shri M.R. Singhvi for the appellant.
Shri B.L. Tiwari Dy.G.A. for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):

This special appeal is directed against the order dated 20.12.1989 dismissing the writ petition of the appellant as well as the order dated 12.4.1991 dismissing the petition seeking review of the said order dated 20.12.1989.

The appellant had filed the writ petition being S.B. Civil Writ Petition no.2748/198 seeking in sum and substance direction to convene meeting of the Departmental Promotion Committee (DPC) to consider/review promotions on the post of Settlement Inspector from amongst Ameens belonging to the SC &

ST categories. The petition was dismissed by the learned Single Judge on 20.12.1989. The appellant sought review of the order on the ground that the writ petition had been dismissed on the premise that candidates in the ratio 2:1, that is, two times the number of vacancies were to be considered for promotion whereas as per notification dated 29.1.1991 the zone of eligibility for promotion had been enlarged to five times the number of vacancies. The said notification had been issued in terms of proviso to Article 309 of the Constitution of India amending various service rules as specified in the Schedule appended to the notification including the Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 which governs the appointment, promotion etc. on the post of Settlement Inspector. The learned Single Judge held that though the zone of consideration had been enlarged from two times to five times the number of vacancies, it would not have materially affected the result of the writ petition inasmuch as the members of the petitioner-Association are placed below Serial no.230, and therefore they were not entitled to consideration for inclusion of their names in the concerned lists. The appellant has come in appeal to the Division Bench.

We have heard Shri M.R. Singhvi, counsel for the appellant and Shri B.L. Tiwari, Deputy Govenrment Advocate, counsel for the respondents.

Counsel for the appellant went into the arithmetic of the unfilled vacancies for the SC & ST candidates as per 100 point roster which was in vogue from 1985 as against 40 point roster in vogue earlier. In our opinion, however, it is futile to consider the claim for promotion on merit at this stage.

Indeed, we have grave doubts about maintainability of the writ petition at the instance of the appellant-Association. An Association of employees can no doubt approach the Court and seek appropriate reliefs where validity of some principle or policy or rule is under challenge but where the dispute involves consideration of inter se claim of employees at large for promotion, we do not think the writ petition at the instance of the association would be maintainable. It need hardly be emphasized that the association stands for all the members and where the promotion is to be given on the basis of seniority -cum- merit, necessitating consideration of inter se claims, it is difficult to appreciate as to how the writ petition at the instance of the association would be maintainable.

Be that as it may, we do not wish to non-suit the appellant on the ground of maintainability of the writ petition. The point is whether any direction can be issued at this stage to convene

review DPC for promotion against the vacancies of the year 1979 or, for that matter, subsequent years. It is not in dispute that as per the relevant rule the unfilled vacancies were to be carried forward for three recruitment years, and thereafter released. The unfilled vacancies of 1979 thus must have been released and filled by general category candidates.

Conscious of this position, counsel for the appellant stated that he would confine the claim to the vacancies for the year 1982. This, in our opinion, would not improve the position. The writ petition was filed in the year 1989. Submission of the counsel in this regard was that the representation was decided only in the year 1988. We are not impressed by this argument for the reason that the representation itself was filed in the year 1988. Earlier, a similar representation had been filed in 1982 which was rejected in 1983. We are satisfied that the cause of action was complete in or around 1982-83 and the appellant should have filed the writ petition soon thereafter. It is well settled position that pendency of unprovided memorials or representations is no explanation of the delay.

The delay in filing the writ petition assumes significance for the reason that during the

intervening period, especially as on date of hearing of this appeal, the persons concerned have been promoted to the post of Settlement Inspector. Indeed, most of them must have retired on reaching their superannuation. More importantly, persons promoted against the vacancies which according to the appellant were meant for the SC/ST candidates were not made party to the writ petition. In their absence, it is not possible to grant any relief to the appellant which would necessitate as a logical consequence, disturbing the promotions already granted to them.

We are of the view that the grievance of the appellant has become stale with the passage of time and no relief can be granted at this stage. The appeal in the circumstances is dismissed.

[GOVIND MATHUR],J. [S.N.JHA],CJ.

Skant/-